

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

CLARENCE D. SCHREANE,)
Petitioner,)
v.) No. 2:20-cv-00045-JPH-DLP
T.J. WATSON,)
ATTORNEY GENERAL OF TENNESSEE,)
Respondents.)

**ORDER GRANTING MOTION TO DISMISS PETITION
FOR A WRIT OF HABEAS CORPUS FOR LACK OF JURISDICTION, DENYING
MOTIONS FOR COUNSEL, AND DIRECTING ENTRY OF FINAL JUDGMENT**

I. MOTION TO DISMISS

Clarence D. Schreane, a federal inmate at Terre Haute Federal Correctional Facility, filed this habeas action pursuant to 28 U.S.C. § 2254 challenging his 2004 convictions for felony murder and especially aggravated robbery in Tennessee state court. Dkt. [1]. The respondent filed a motion to dismiss arguing that Mr. Schreane previously brought a § 2254 habeas petition challenging the same conviction. Dkt. [22]. Mr. Schreane's previous habeas petition challenging the same conviction was denied on the merits in *Schreane v. Slatery*, No. 1:13-cv-00190, 2015 WL 5703193 (E.D. Tenn. Sept. 28, 2015). On appeal, the United States Court of Appeals for the Sixth Circuit appointed counsel, and upon briefing and oral argument, the court affirmed the judgment of the district court. The Supreme Court denied certiorari. *Schreane v. Ebbert*, 864 F.3d 446 (6th Cir. 2017), *cert. denied*, 138 S. Ct. 519 (2017).

Mr. Schreane responded, arguing that his petition is not successive because he raises new claims for relief in the instant petition. When there has already been a decision on the merits in a federal habeas action, to obtain another round of federal collateral review a petitioner requires

permission from the Court of Appeals under 28 U.S.C. § 2244(b). *See Altman v. Benik*, 337 F.3d 764, 766 (7th Cir. 2003). This statute "creates a 'gatekeeping' mechanism for the consideration of second or successive [habeas] applications in the district court." *Felker v. Turpin*, 518 U.S. 651, 657 (1996). Indeed, a district court does not have subject matter jurisdiction over a second or successive petition. *In re Page*, 170 F.3d 659, 661 (7th Cir. 1999). The "district court *must* dismiss a second or successive petition, without awaiting any response from the government, unless the court of appeals has given approval for the filing." *Id.* This is true even if the successive petition raises new claims not reviewed in the first petition.

Mr. Schreane's petition is successive and there is no indication that he has obtained leave from the Seventh Circuit to file it. Accordingly, the respondent's motion to dismiss, dkt. [22], is **granted** and this action is **dismissed for a lack of jurisdiction**. Mr. Schreane must obtain authorization from the Seventh Circuit Court of Appeals before this Court may consider his habeas petition. Final Judgment in accordance with this decision shall issue.

II. MOTIONS FOR THE APPOINTMENT OF COUNSEL

Mr. Schreane's motions for the appointment of counsel dchts. [18] & [19], are **denied**. A petitioner pursuing federal habeas relief is entitled to counsel only when he is under a death sentence, which Mr. Schreane is not. *See* 18 U.S.C. § 3599(a)(2); *McFarland v. Scott*, 512 U.S. 849, 855 (1994). Counsel must also be appointed in a habeas case when an evidentiary hearing is necessary to resolve the petition. Rule 8(c) of the *Rules Governing Section 2254 Cases*. Here, no hearing is required because the Court lacks jurisdiction to decide the unauthorized successive petition. These are not circumstances in which it is in the interest of justice to appoint counsel for Mr. Schreane. *See* 18 U.S.C. § 3006A(a)(2)(B) ("Whenever . . . the court determines that the interests of justice so require, representation may be provided for any financially eligible person

who . . . is seeking relief under section 2241, 2254, or 2255 of title 28."); *see also Winsett v. Washington*, 130 F.3d 269, 281 (7th Cir. 1997).

SO ORDERED.

Date: 6/4/2020

James Patrick Hanlon

James Patrick Hanlon
United States District Judge
Southern District of Indiana

Distribution:

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